



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 5, 1996

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR96-0880

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 39729.

The Texas Department of Public Safety (the "department") received a request for information in an administrative inquiry file relating to a personnel matter. You assert that the requested information is excepted from disclosure by section 552.103 of the Government Code and have submitted the responsive documents to our office for review.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. A governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See generally* Open Records Decision No. 638 (1996).

You assert that the requested information is related to a pending complaint against the department with the Equal Employment Opportunity Commission ("EEOC"). This office has held that the pendency of a complaint before the commission indicates a substantial likelihood of potential litigation. Open Records Decision No. 386 (1983) at 2.

Therefore you have satisfied the first prong of the test that determines the applicability of section 552.103. Additionally, based on your assertions to this office, we conclude that you have sufficiently demonstrated that the requested information relates to the subject matter of the EEOC complaint, thus satisfying the second prong of the litigation exception text. Although the administrative inquiry file that is sought in the case at hand is not the about the individual who filed the EEOC complaint, you assert that the file has become "entwined" with the EEOC complaint because the requested inquiry involves personnel issues that are similar to those in the EEOC complaint, and the EEOC complainant has specifically raised the requested inquiry as an issue in the EEOC proceeding. Based on this assertion, you may withhold the requested information under section 552.103 of the Government Code.

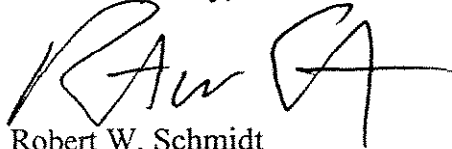
In reaching this conclusion, however, we assume that the opposing party to the anticipated litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the anticipated litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).¹

Finally, we note that in the request for information, the requester asks the department to answer a number of questions relating to the administrative inquiry in the event that the inquiry file is not provided. The department argues that a governmental body is not required under the Open Records Act to answer general questions. *See* Open Records Decision Nos. 563 (1990) at 8, 379 (1983) at 4. We agree that the department is not required to compile information in response to these questions. Although a governmental body is required to make a good faith attempt to match a request for information with information held by the governmental body, Open Records Decision No. 561 (1990) at 8, we agree that in this situation the department is not required to respond to the questions by producing documents that, as discussed above, may be withheld from disclosure under section 552.103 of the Government Code.

¹Because we resolve this matter under section 552.103 of the Government Code, we do not specifically address the other exception that you raise. We note, however, that certain information contained within the requested documents appears to be confidential under section 552.101. A governmental body may not release confidential information. Gov't Code § 552.352.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read 'RWS' followed by a stylized flourish.

Robert W. Schmidt
Assistant Attorney General
Open Records Division

RWS/rho

Ref.: ID# 39729

Enclosures: Submitted documents

cc: Ms. Charlesane Gardner
Texas Highway Patrol
2405 S. Loop 250 W.
Midland, Texas 79703
(w/o enclosures)